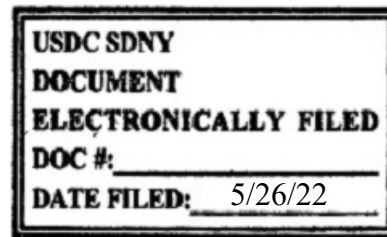


May 26, 2022

Via ECF

Honorable Barbara Moses
United States Magistrate Judge
Southern District of New York
Daniel Patrick Moynihan
United States Courthouse
500 Pearl Street
New York, NY 10007-1312



MEMO ENDORSED

Re: Diaz v. Decker, at al., No. 22-cv-3063

Dear Judge Moses:

I represent Petitioner Salvador Diaz in his petition for a writ of habeas corpus filed on April 13, 2022. We respectfully request that the Court, in accordance with the Memo Endorsement and Order dated May 19, 2022, ECF 24, permit Respondents' Return and accompanying exhibits at ECF 19 to remain under seal. The publicly filed versions of these documents are filed at ECF 22 and redact only the Petitioner's birth date and month and part of his "alien number." As stated in her request for sealing, ECF 23, Counsel for Respondents, Tara Schwartz of the United States Attorney's Office does not oppose this request.

Counsel for Respondents filed Respondents' Return, ECF 19, and accompany exhibits 1 through 9, on May 18, 2022, in accordance with the so-ordered briefing schedule. *See* ECF 7. As stated in Respondents' letter dated May 19, 2022, after the filing was completed, I contacted counsel for Respondents to request that Petitioner's date and month of birth and the last three digits of his "alien" number, also known as an "A" number, be redacted in accordance with Federal Rule of Civil Procedure 5.2 and the Southern District of New York Electronic Case Filing Rules & Instructions ("ECF Rules") 21.3 and 21.4 (May 2, 2022 Edition). Counsel for Respondents read FRCP 5.2 differently, but obliged.

Differing interpretations of FRCP 5.2 aside, ECF Rule 21.3 states that "in all cases," dates of birth (except for the year of birth) should be redacted. This local rule does not include the exception at FRCP 5.2 that Respondents cite. As such, we consider the federal rule to be a floor, and not a ceiling, on privacy protections covered by courts in this district. Rule 21.4 also advises to exercise caution when filing documents with personal identifying numbers, such as driver's license numbers. Petitioner's A number is analogous and falls within the spirit of ECF Rule 21.4.

Because these proposed redactions are limited to the personal identifying information contemplated by the Federal Rules, as well as the local filing rules, it follows that they are sufficiently narrowly tailored to meet the standard under *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119-20 (2d Cir. 2006). Indeed, the public is only being restricted from viewing

highly personal identifying information that no one who chooses to access the courts should be forced to share due to the risk of identity theft, medical fraud, and the like.¹ Nothing concerning the substance of the litigation has been redacted. *Cf.* ECF Rule 21.3 (“You should not include sensitive information in any document filed with the Court unless such inclusion is necessary and relevant to the case.”) Additionally, ss Petitioner detailed in his initial Motion to Proceed Anonymously, ECF 2, 3, and subsequent Motion to Seal Exhibits D and E, ECF 10, the Petition touches on sensitive topics such as medical and mental health diagnoses and fear-based claims for relief in removal proceedings.

Despite the presumption of public access to information, redaction of only personally identifying dates and partial numbers is sufficiently narrow to outweigh the presumption. Petitioner Mr. Diaz respectfully requests that the Court permit Respondent’s Return and accompanying exhibits at ECF 19 to remain under seal.

Thank you for your consideration.

Respectfully submitted,

/s/ Jessica Swensen

Jessica Swensen
THE BRONX DEFENDERS
360 East 161st Street
Bronx, New York, 10451

Application GRANTED. The Clerk of Court is respectfully directed to retain Dkt. No. 19 under seal. SO ORDERED.



Barbara Moses
United States Magistrate Judge
May 26, 2022

¹ This is the case regardless of whether the information can be accessed through PACER or in person.